

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 58th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN JIM SHOCKLEY**, on January 16, 2003 at 8 A.M., in Room 137 Capitol.

ROLL CALL

Members Present:

Rep. Jim Shockley, Chairman (R)
Rep. Paul Clark, Vice Chairman (D)
Rep. Jeff Laszloffy, Vice Chairman (R)
Rep. George Everett (R)
Rep. Tom Facey (D)
Rep. Steven Gallus (D)
Rep. Gail Gutsche (D)
Rep. Christopher Harris (D)
Rep. Michael Lange (R)
Rep. Bruce Malcolm (R)
Rep. Brad Newman (D)
Rep. Mark Noennig (R)
Rep. John Parker (D)
Rep. Holly Raser (D)
Rep. Diane Rice (R)
Rep. Scott Sales (R)
Rep. Ron Stoker (R)
Rep. Bill Thomas (R)

Members Excused: None.

Members Absent: None.

Staff Present: John MacMaster, Legislative Branch
Lisa Swanson, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing & Date Posted: HB 195, 1/16/2003; HB 197,
1/16/2003; HB 199, 1/16/2003; HB
200, 1/16/2003

Executive Action: HB 200; HB 57; HB 141; HB 15; HB 77

HEARING ON HB 195

Sponsor: REP. CINDY YOUNKIN, HD 28, Bozeman

Opening Statement by Sponsor:

REP. YOUNKIN opened on HB 195 on behalf of the Montana Department of Transportation (MDOT). She stated that this bill is third in a package of bills involving DUI legislation along with the .08 and open container legislation. She stated this bill would bring Montana into compliance with the United States Department of Transportation mandates for minimal penalties. She explained that people who continue to drink and drive are endangering the lives of others on the roads. She stated one of the primary motives of this bill is to retain federal highway construction dollars as well as public safety. She described the penalties of this bill as follows: driver's license suspended for first offense for a year; on a second or subsequent offense, the license would be suspended, mandatory jail time and forfeiture of all vehicles or installation of an ignition interlock device; on a fourth offense, a felony, all vehicles would be forfeited.

REP. YOUNKIN read the fine increases of the bill and reserved time to close.

EXHIBIT(juh09a01)

{Tape: 1; Side: A; Approx. Time Counter: 1 - 74}

Proponents' Testimony:

Tom Beck, Chief Policy Advisor for Governor Martz, supported HB 195. He stated this bill is necessary to comply with the feds for Montana's highway funds, but more importantly, this bill is important to reduce the number of deaths related to DUI's in Montana.

{Tape: 1; Side: A; Approx. Time Counter: 75 - 104}

Dave Galt, Director of MDOT, supported HB 195. He stated Montana is third in the nation for alcohol-related fatalities. He explained this bill would ensure Montana meets safety standards and will continue to receive federal funds.

{Tape: 1; Side: A; Approx. Time Counter: 105 - 119}

Brenda Nordlund, Assistant Attorney General, supported HB 195. She explained this bill will help save lives and avoid the transfer of highway dollars. She provided a copy of the Code of

Federal Regulations (CFR) which listed the compliance requirements.

EXHIBIT (juh09a02)

{Tape: 1; Side: A; Approx. Time Counter: 120 - 136}

Shawn Driscoll, Chief of Highway Patrol, supported HB 195.

{Tape: 1; Side: A; Approx. Time Counter: 137 - 140}

Carrey Heggberg, Montana Contractors' Association, supported HB 195. He stated the funding is for highway construction as well as public safety.

{Tape: 1; Side: A; Approx. Time Counter: 141 - 159}

William Muhs, President of Mothers Against Drunk Driving, supported HB 195. He stated his family lost their daughter in a drunk driving accident in 1990 while she was on her way to Billings for a summer internship. He stated her name was Ann Marie and she was just 90 days from her 21st birthday. He gave statistics that showed since his daughter's death, more than one thousand two hundred Montanans have lost their lives in alcohol-related traffic accidents. He explained that is equivalent to losing all the residents of Manhattan, Montana. He supported increased penalties for drunk driving. He closed by stating the real costs to Montana are the loss of human lives. He stated HB 195 would help reduce the increase in alcohol-related fatalities.

EXHIBIT (juh09a03)

EXHIBIT (juh09a04)

EXHIBIT (juh09a05)

EXHIBIT (juh09a06)

EXHIBIT (juh09a07)

{Tape: 1; Side: A; Approx. Time Counter: 160 - 255}

George Corn, Montana County Attorney's Association, Ravalli County Attorney, supported HB 195. He stated this bill is a real nuts and bolts of the DUI package and deals with the problem on the front end. He believes more punitive actions for DUI offenders are necessary to have a deterrent effect.

{Tape: 1; Side: A; Approx. Time Counter: 256 - 325}

Christy Blazer, Montana Beer and Wine Wholesalers' Association, supported HB 195. She stated her clients support this bill and the move to .08. She agreed that drunk driving is a tragedy.

However, she reported that although the National Highway Traffic Safety Commission ranked Montana third in the nation for alcohol-related traffic deaths, the same report stated that Montana's alcohol-related death rate has dropped 59% since 1982. The Chief of Montana Highway Patrol, Colonel Obert, reported on November 1, 2003 that Montana's alcohol-related traffic deaths have dropped 54% between 1980 and 2000. She emphasized support of the bill's emphasis on the repeat offender.

{Tape: 1; Side: A; Approx. Time Counter: 326 - 376}

Mr. Recke, Cascade County DUI Task Force, supported HB 195. He passed out a photo of a victim from a drunk driving accident. He stated his job is to get drunk drivers off the road. He recommended getting money from the violators of DUI laws by increasing penalties.

EXHIBIT (juh09a08)

{Tape: 1; Side: A; Approx. Time Counter: 377 - 411}

Opponents' Testimony: None

Informational Testimony:

Mike Barrett, Poet and Letter Writer, Helena, described himself as being 33% proponent, 33% opponent and 33% informational. He stated fresh air in public places, understanding energy control, and more clarity on TV and radio about the problems of drugs and alcohol would help. He stated these ideas are fundamental and should be written on school walls. He urged that people are consistently confused, on the roads, and ideas of safety and health become obscured. He stated better communication of energy control in driver's educational classes would help.

{Tape: 1; Side: A; Approx. Time Counter: 414 - 494}

Questions from Committee Members and Responses:

REP. RICE and other committee members asked questions about the correlation between blood alcohol content and traffic accidents.

{Tape: 1; Side: A; Approx. Time Counter: 494 - 514}

REP. RICE commented that many people arrested for DUI are released because the jails and prisons are over-crowded beyond maximum capacity. **REP. YOUNKIN** responded that is true in some cases. **REP. MALCOLM** asked Sergeant Driscoll about the interlock ignition device. **Sergeant Driscoll** stated the Highway Patrol

does not administer that device. **Dean Roth, Administrator of the Motor Vehicle Division**, explained the electronic device, stating that it basically measures alcohol through breath and will not allow the car to start if the person fails the test. The cost is \$65 to install plus a monthly charge and needs to be recalibrated every six weeks.

{Tape: 2; Side: A; Approx. Time Counter: 1 - 78}

REP. CLARK asked about the rehabilitation program. **Ms. Nordlund** responded that this program only decides who gets a probationary license during a suspension or revocation, and monitors offenders as to whether they comply with their restrictions. **REP. CLARK** asked about mandatory treatment. **Ms. Nordlund** stated that is a mandate for all second or subsequent DUI offenses and has been in Montana since about 1995. **REP. CLARK** asked Ms. Nordlund about the bulk of the offenders and who pays for their treatment. **Ms. Nordlund** responded she did not know.

{Tape: 2; Side: A; Approx. Time Counter: 79 - 110}

REP. GUTSCHE asked Ms. Nordlund about what other states have implemented the stiffer penalties and what they are. **Ms. Nordlund** stated the Carolinas are working on it but she doesn't know exactly which states. She stated the MDOT has a digest that tells which state has done what and when. **REP. GUTSCHE** asked Ms. Nordlund whether it is working; whether the laws are keeping drunk drivers off the road. **Ms. Nordlund** referred the question to MDOT. **Dave Galt, MDOT**, responded that the National Highway Traffic Safety Administration, which is responsible for highway traffic safety, feels the three bills (.08, open container and tougher repeat offender laws) are the cornerstone of DUI laws.

{Tape: 2; Side: A; Approx. Time Counter: 111 - 157}

REP. EVERETT asked about arresting any DUI suspect. **Colonel Driscoll** responded that is correct if they are on a public highway and meet the criteria. **REP. EVERETT** asked about stops on the reservations. **Colonel Driscoll** stated the Highway Patrol has cross deputization agreements with the Salish and the Fort Peck Reservations and are working on agreements with other reservations. He stated they write reports and treat it like any other offense. He stated they do these agreements to ensure that people DUI are not being released due to a technicality.

{Tape: 2; Side: A; Approx. Time Counter: 158 - 228}

REP. STOKER expressed his concern over bad guys deactivating the interlock devices and how many since 1999 have been installed.

Mr. Roth stated they are tamper-proof and he did not know the numbers installed. **REP. FACEY** commented that the gentleman who has the franchise on the ignition interlock device resides in his district and he will get the information for **REP. STOKER**.

{Tape: 2; Side: A; Approx. Time Counter: 229 - 287}

REP. LANGE asked **Mr. Corn** about the bill allowing a misdemeanor on the first three offenses. **Mr. Corn** responded that many states make a third DUI a felony.

{Tape: 2; Side: A; Approx. Time Counter: 288 - 325}

REP. STOKER asked about a trial de novo. **Mr. Corn** responded that in Montana, someone convicted of a first offense DUI has a right to a second trial in District Court. He stated that there is no reason to have two jury trials on DUI's.

{Tape: 2; Side: A; Approx. Time Counter: 326 - 382}

CHAIRMAN SHOCKLEY asked about the penalty for deactivating the devices. **Ms. Nordlund** responded the penalty is listed in 61-8-440 and would be a misdemeanor, \$500 and/or six months.

Closing by Sponsor:

REP. YOUNKIN closed on HB 195 stating that 23 other states have come into compliance with the repeat offender laws. She explained some statistics on the fiscal note. She discussed the issue of the federal dollars existing out there and emphasized that this bill is one of public policy. She stated that Montana needs to send the message that it's not going to condone drunk driving anymore. She emphasized that the legislators are the leaders of the people, and that it all starts here then spreads to the communities.

{Tape: 2; Side: A; Approx. Time Counter: 383 - 521}

CHAIRMAN SHOCKLEY commented on the fiscal note which stated that people who do not blow are not convicted. He disagreed stating in his experience with working in this area is that most of the people who do not blow are convicted. He urged **REP. YOUNKIN** to have the fiscal note corrected.

{Tape: 2; Side: A; Approx. Time Counter: 522 - 529}

HEARING ON HB 197**Sponsor:** REP. ARLENE BECKER, HD 18, Billings**Opening Statement by Sponsor:**

REP. BECKER opened on HB 197. She stated this bill would revise laws relating to revocations, suspensions, and record-keeping of driver's licenses. She stated this bill would remove the requirement that the Department of Justice (DOJ) establish by administrative rule, a driver rehabilitation and improvement program. She stated that this bill would change the required language to permissive language; clarify record-keeping; and changes on the mandate of revocation to suspension.

Brenda Nordlund, Assistant Attorney General, stated this bill is to streamline and improve the Department of Motor Vehicles (DMV). She emphasized the reality is the mandated program stemming from SB 334 is not working as there is not funding to implement it.

Ms. Nordlund stated the DMV is responsible for maintaining records, suspending or revoking driver's licenses, and overseeing the issuance of probationary licenses. She described the burden on the DMV when revocations occur and stressed that the DMV can suspend instead. She laid out how a suspension would be technically and fiscally superior and realistic for Montana. She described the difference between a license revocation and a license suspension relates to what is required of the driver after the period of withdrawal ends and the driver wants the privilege to drive restored. On a suspension, when the period ends, the DMV simply changes the status on the computer and mails the license back to the person. She stated that a revocation terminates a driving privilege and the person must start the license process over. She stated that this process is daunting for DMV and involves great time and expense of taxpayer dollars.

Ms. Nordlund stressed Montana cannot have mandates on the books which are not enforceable. She related it to trying to run driver's education program without any funding to do it. She explained that at present the DMV is in a tenuous position and the law needs to be changed. She spoke of changing section two of the bill as it is breeding litigation. She stated Montana denied an individual's right to a driver's license from another state. She stated the Montana Supreme Court determined that Montana should apply its own standards to the conduct committed by someone from out of state. She spoke on the logistics of revocation as opposed to suspension and how the latter would accomplish the same goal but with much less time and expense to the DMV.

EXHIBIT(juh09a09)

EXHIBIT(juh09a10)

{Tape: 2; Side: B; Approx. Time Counter: 1 - 343}

Shawn Driscoll, Chief Montana Highway Patrol, supported HB 197. He stated they utilize driver's records and it assists them in a stop to gather the history of a person.

Proponents' Testimony: None

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses:

REP. PARKER asked about out-of-state driving records and whether they are discoverable. **Ms. Nordlund** stated it would be but it only pertains to licenses that are suspended or revoked.

REP. HARRIS asked whether DOJ would be satisfied if this bill passed. **Ms. Nordlund** stated this bill would satisfy the DMV's business practices. She stated this bill should be coordinated with other bills on this matter. **REP. HARRIS** asked whether any progress is being made. **Ms. Nordlund** stated this bill sends a message along with some public shaming. **REP. RICE** asked Ms. Nordlund about section two of the bill. **Ms. Nordlund** stated that section does not create a national data base. She stated it is from jurisdiction to jurisdiction and only points a person to where they might find information.

{Tape: 2; Side: B; Approx. Time Counter: 340 - 494}

REP. NOENNIG asked about an out-of-state driving record. **Ms. Nordlund** responded that if she is from North Dakota and has two prior convictions from North Dakota, the DMV would rely on it because of subsequent conduct. **REP. NOENNIG** stated this bill would allow Montana to have the records and not have to reinvent them. **Ms. Nordlund** stated that if DMV has extended history on a person, it can make choices based on Montana law.

{Tape: 3; Side: A; Approx. Time Counter: 1 - 103}

REP. NOENNIG asked why Montana should give a break to a DUI offender by suspending rather than revoking. **Ms. Nordlund** stated there is no evidence to show that revoking makes a person a better driver. A suspended license takes away their lawful

privilege to drive. The only difference between revocation and suspension from the perpetrator's view is at the tail end.

{Tape: 3; Side: A; Approx. Time Counter: 104 - 142}

REP. PARKER asserted that driving while suspended is the same penalty as driving while revoked and that they both require six months in jail or a \$500 fine. He stated this bill would give the prosecution opportunities to hold people accountable for driving on a suspended license.

{Tape: 3; Side: A; Approx. Time Counter: 143 - 152}

Closing by Sponsor:

REP. BECKER closed on HB 197. She stated, regarding the DOJ mandated program, that it is a good program but not in existence at present due to lack of funding. She urged the committee to consider suspension over revocation as a good public policy decision. She stated that perhaps the program could be reinstated down the road by the legislature if money becomes available.

{Tape: 3; Side: A; Approx. Time Counter: 153 - 169}

HEARING ON HB 200

Sponsor: **REP. CHRISTOPHER HARRIS, HD 30, Bozeman**

Opening Statement by Sponsor:

REP. HARRIS opened on HB 200 which creates a biological agents registry in the Department of Justice (DOJ) authorizing civil penalties for a violation of the registry. He asked this bill be tabled as the federal government will be enacting adequate legislation.

CHAIRMAN SHOCKLEY stated that in light of REP. HARRIS'S request to table HB 200, the Hearing on HB 200 was suspended.

{Tape: 3; Side: A; Approx. Time Counter: 170 - 192}

EXECUTIVE ACTION ON HB 200

Motion/Vote: **REP. GALLUS** moved that **HB 200 DO PASS**. Motion failed 0-18 by voice vote.

Motion/Vote: REP. GALLUS moved that HB 200 BE TABLED. Motion carried 18-0 voice vote.

HEARING ON HB 199

Sponsor: REP. HARRIS, HD 30, Bozeman

Opening Statement by Sponsor:

REP. HARRIS opened on HB 199. He stated this bill would authorize a driver to post a driver's license instead of bail for traffic offenses. He stated this bill would mandate a \$25 fee for a motorist who used this method. He gave Highway 191 as an example of a speeder by Big Sky. The officer collects cash and if he did not, the officer would have to follow the driver to the Bozeman jail. This poses a danger to the officer as well as the public since the officer is not available for the time he is escorting the driver. He stressed officers need to patrol the highways and not be babysitting the motorist into town.

{Tape: 3; Side: A; Approx. Time Counter: 193 - 270}

Proponents' Testimony:

Brenda Nordlund, DOJ, supported HB 199. Ms. Nordlund stated she scribed the bill and proceeded to go over the bill's mechanics.

{Tape: 3; Side: A; Approx. Time Counter: 271 - 371}

{Tape: 3; Side: A; Approx. Time Counter: 284 - 371}

Shawn Driscoll, Chief Montana Highway Patrol, supported HB 199. He stated the highway patrol responds to over 70,000 calls a year; they investigate over 11,000 crashes a year; they arrest 3,500 a year which involves incarceration; and they stop 100,000 violators a year. He stated when they stop someone on a minor traffic violation, they have three options: issue a notice to appear and release, issue a notice requesting and collecting bond set by the court, or incarceration. He stated significant violations like a DUI would not be treated under this bill. He stated this bill would give law enforcement one more tool.

{Tape: 3; Side: A; Approx. Time Counter: 372 - 497}

Opponents' Testimony:

Scott Restvedt, Montana Bail Bonds Association, opposed HB 199. He stated this bill would add administrative costs and burden the

courts. He emphasized in a post 911 era, having a driver's license as a photo ID is paramount. He believed this bill would pose a hardship on all concerned parties.

{Tape: 3; Side: B; Approx. Time Counter: 1 - 77}

Kelly Reisbeck, Montana Bail Agents Association, opposed HB 199. He stated this bill allows people stopped for DUI to just walk out.

Paul Jara, opposed HB 199. He stated he was in law enforcement and believes this bill is not good public policy. He emphasized he served warrants in Cascade County and this bill would not guarantee they would show up in court.

{Tape: 3; Side: B; Approx. Time Counter: 102 - 114}

Steve Crow, Valley Bail Bonds, opposed HB 199.

Informational Testimony: None

Questions from Committee Members and Responses:

REP. NOENNIG asked **REP. HARRIS** about the bail bondsman's concern over the effectiveness. **REP. HARRIS** responded that a DUI would not be able to qualify under this bill and that the language could be amended to clarify that point.

{Tape: 3; Side: B; Approx. Time Counter: 129 - 158}

Officer Driscoll responded this bill would be used only on minor traffic violations. He believed it would be effective and it would guarantee their appearance in court as they would need their driver's license to get through life. **REP. MALCOLM** suggested using a credit card. **REP. HARRIS** stated that would be a possibility and is a good idea.

Closing by Sponsor:

REP. HARRIS closed on HB 199 urging a do pass stating this bill gives Montana law enforcement one more tool to utilize to ensure a defendant's appearance in court.

{Tape: 3; Side: B; Approx. Time Counter: 309 - 315}

EXECUTIVE ACTION ON HB 15

Motion: REP. NEWMAN moved that HB 15 DO PASS.

{Tape: 3; Side: B; Approx. Time Counter: 329 - 340}

Discussion:

REP. RASER stated she is not proposing amendments.

Vote: Motion carried unanimously 18-0 voice vote.

EXECUTIVE ACTION ON HB 57

Motion: REP. GUTSCHE moved that HB 57 DO PASS.

Discussion:

The committee discussed Jacobson's bill regarding a failure to stop also known as the hit-and-run bill. REPS. NOENNIG and HARRIS discussed leaving the scene and different scenarios such as a one-car accident or hitting a deer and going for help. REP. GUTSCHE passed out an email she received regarding the breakdown of states which have hit-and-run laws. She reported there are 41 states which make a hit-and-run resulting in serious bodily injury or death, a felony. REPS. NOENNIG and HARRIS stated they have problems with the bill's language as drafted due to the seriousness of becoming a felony. REPS. STOKER, HARRIS, GUTSCHE and NEWMAN spoke at length about amending this bill.

Exhibit (10)

Motion/Vote: REP. CLARK moved that HB 57 BE TABLED. Motion carried unanimously 16-0 voice vote.

EXECUTIVE ACTION ON HB 77

Motion: REP. GALLUS moved that HB 77 DO PASS.

{Tape: 4; Side: A; Approx. Time Counter: 69 - 72}

Motion: REP. SHOCKLEY moved that HB 77 BE AMENDED.

Discussion:

The committee discussed HB 77 and aspects of post-conviction DNA testing. Mr. McMaster passed out amendments and explained them

to the committee regarding decisions concerning guilty pleas for crimes one did not commit. He stated changes will be made to give the court the choice of which lab would be used unless the lab is out of state. **CHAIRMAN SHOCKLEY** asked REP. CLARK to take over as CHAIRMAN. **REPS. SALES, FACEY, NOENNIG, HARRIS, PARKER, LANGE** and **NEWMAN** discussed a sunset provision in the bill.

{Tape: 4; Side: A; Approx. Time Counter: 73 - 122}

Vote: Motion TO AMEND HB 77 carried unanimously 16-0 voice vote.

{Tape: 4; Side: A; Approx. Time Counter: 123 - 175}

Discussion:

The committee discussed evidence and the chain of custody. **REP. HARRIS** stated to put the burden on the prisoner's shoulders to show chain of custody is not fair. He stated Professor Renz submitted some amendments to change that part of the bill. **REP. HARRIS** stated he wished to move Professor Renz's amendments because the state had control of the evidence not the prisoner and these provide safeguards.

Motion/Vote: REP. HARRIS moved that **HB 77 BE FURTHER AMENDED** (Professor Renz's amendments). **Motion to further amend carried unanimously 18-0 voice vote.**

Discussion:

REPS. NOENNIG, PARKER, SHOCKLEY, HARRIS, CLARK and **FACEY** discussed REP. JENT'S amendments. Committee discussed whether to consider the Jent Amendments. **REP. FACEY** read the parliamentary procedure on bringing up a bill previously voted on but not reported out of committee. He stated a motion to reconsider further amendments could be considered. **REP. NOENNIG** discussed the Jent amendments and whether to segregate them into two separate amendments. The committee decided that would be a good idea.

Motion/Vote: REP. SHOCKLEY moved to **SEGREGATE THE TWO JENT AMENDMENTS TO HB 77.** **Motion to segregate Jent amendments carried unanimously 18-0 voice vote.**

{Tape: 4; Side: B; Approx. Time Counter: 42 - 56}

Discussion:

REP. CLARK explained the two Jent amendments to HB 77. Committee considered both Jent amendments and took action on each one separately.

Motion/Vote: **REP. GUTSCHE** moved that **HB77 BE AMENDED**. (First Jent Amendment, page 3, line 25) **Motion carried unanimously 18-0 voice vote.**

Motion/Vote: **REP. GUTSCHE** moved that **HB 77 BE AMENDED**. (Second Jent Amendment, "a minimum of") **Motion carried unanimously 18-0 voice vote.**

Motion/Vote: **REP. SHOCKLEY** moved that **HB 77 AS AMENDED DO PASS**. **Motion carried unanimously 18-0 voice vote.**

{Tape: 4; Side: B; Approx. Time Counter: 46 - 91}

EXECUTIVE ACTION ON HB 141

Motion: **REP. LANGE** moved that **HB 141 DO PASS**.

{Tape: 4; Side: B; Approx. Time Counter: 152 - 154}

Discussion:

The committee discussed amendments. **REP. LANGE** suggested amending the language on page 1, line 26 of HB 141, to insert the word "knowingly" after "was" to read, "the offender was knowingly in an area of 35 mph or less."

Motion: **REP. LANGE** moved that **HB 141 BE AMENDED**.

{Tape: 4; Side: B; Approx. Time Counter: 155 - 171}

Discussion:

REP. NOENNIG asked **REP. LANGE** to explain his amendment. **REP. LANGE** responded that he believed it would be a good change. **John McMaster** replied that they added "a mental state" at **REP. NOENNIG'S** request. **REPS. NOENNIG, and HARRIS** discussed the language "knowingly" and whether the mental state element is necessary and whether a mental state amendment would improve the bill. **REP. LANGE** withdrew his motion to amend **HB 141**.

{Tape: 4; Side: B; Approx. Time Counter: 172 - 272}

Discussion:

CHAIRMAN SHOCKLEY announced the committee was back on the bill as amended. **REPS. FACEY, LANGE, NEWMAN, GALLUS** and **SALES** discussed the prosecution's burden of making a case and proving who was driving. The committee discussed meeting the burden of proof to establish the crime. **REP. GUTSCHE** opined that Shawn Driscoll testified that if a high speed chase results in death or serious bodily injury, the driver can be charged with a felony under current law. **REP. NEWMAN** responded that was correct but that Officer Driscoll also testified it would be good public policy to recognize that high speed pursuit should be addressed separately in the code. **REP. GUTSCHE** stated there was testimony from DOC that this bill would add a minimum of 5-10 more offenders a year and the increased costs to reflect that. She emphasized this is a concern at a time when Montana is slashing budgets. **REP. NOENNIG** expressed his concern in a situation where a person gets a felony for eluding a police officer due to leaving an accident which he did not cause. **John McMaster** reiterated this point that the bill's language should be clear that the pursuit is from the police officer.

{Tape: 4; Side: B; Approx. Time Counter: 275 - 511}

REP. SHOCKLEY stated that criminal endangerment covers the high speed pursuit. **REP. PARKER** agreed but emphasized there are times when the prosecution cannot charge criminal endangerment which this bill would cover. **REP. GALLUS** reflected on crimes in the past which were misdemeanors which became felonies. He stressed that Montana is having budgetary concerns and this will be a big bill to finance. **CHAIRMAN SHOCKLEY** stated he is against designer crimes. He stated he cannot support this bill because Montana already has vehicular assault, negligent homicide and criminal endangerment.

{Tape: 4; Side: B; Approx. Time Counter: 1 - 134}

Motion/Vote: **REP. GALLUS** moved that **HB 141 DO PASS**. Motion failed 9-9 voice vote with **REPS. LANGE, HARRIS, FACEY, PARKER, RASER, THOMAS, STOKER EVERETT** and **NEWMAN** voting yes.

Motion/Vote: **REP. FACEY** moved that **HB 141 BE TABLED**. Motion carried unanimously 17-1 voice vote with **REP. NEWMAN** voting No.

ADJOURNMENT

Adjournment: 12 P.M.

REP. JIM SHOCKLEY, Chairman

LISA SWANSON, Secretary

JS/LS

EXHIBIT (juh09aad)